

d. Governing Law. Subject to the court’s determination of the law that applies to the case, the parties believe and agree that the substantive issues in this case are governed by the following law:

Kansas Law.

2. STIPULATIONS.

a. The following facts are stipulated:

1. The Disability Insurance Application (the “Application”), as amended, applied for Disability Income Insurance coverage with Catastrophic Disability Benefit, Cost of Living Adjustment, and Residual Disability and Recovery Benefit Riders.

2. The Application states that Garver was 50% owner of Robert Garver Builders, Inc.

3. The Application states that no agent, broker, licensed representative, telephone interviewer, or medical examiner has any authority to determine insurability, or to make, change, or discharge any contract, or to waive any of Principal Life’s rights.

4. The Application states that Principal Life’s right to truthful and complete answers to all questions on the application(s) and on any medical questionnaire(s) that become part of the Application may not be waived.

5. The Application states Garver’s primary occupation as General Contractor.

6. Garver was injured in an accident on July 12, 2017.

7. The Claim form states that Garver’s occupational duties included:

Framing, trim carpentry, deck building, operating machinery and operating tools. . . .

8. On August 30, 2018, Stephanie Garcia of Principal Life emailed Garver and stated:

With Bob's return to work in July, we will begin viewing his claim under the Residual Disability rider. We will need monthly paystubs from him from June to current and then monthly going forward in order to calculate his Loss of Earnings.

9. On September 13, 2018 Garcia wrote Garver a letter stating:

Since you've returned to work, we'll calculate your monthly earnings and pay your benefits based upon your Loss of Earnings. To complete this calculation, please send your monthly pay statements and profit and loss statements on an ongoing basis. To ensure prompt payments, please provide your monthly earnings information timely. At this time, we will need statements from January 2018 to current.

If we do not receive the requested information by the above date, we will have to make a decision based on the information we already have.

10. On September 23, 2018, Garver emailed Garcia and stated:

I am not agreeable to providing pay stubs or any other financial information at this time.

11. On September 28, 2018 Garcia wrote Garver a letter stating:

As of the date of this letter, we have not received the Proof of Loss that is needed for us to evaluate your claim to determine your eligibility to benefits per the terms of your policy. Consequently, we are denying your claim.

b. Plaintiff proposes that the parties will stipulate to the admissibility of exhibits for purposes of summary judgment and trial by August 31, 2020. [Defendants are willing to stipulate to the admissibility of the exhibits used at the depositions in this matter as reflected on below list:

| No. | Description | Bates Range |
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| 1 | 2/26/2014 Email from Deanna to Garver | ROTH 113 |

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| 2 | 2/28/2014 Email from Deanna to Garver | ROTH 114 |
| 3 | 3/03/2014 Email from Deanna to Garver | ROTH 115 |
| 4 | 3/03/2014 Email from Garver to Deanna | ROTH 118 |
| 5 | 3/03/2014 Email from Deanna to Garver | ROTH 120 |
| 6 | 3/12/2014 Email from Deanna to Garver | ROTH 125-127 |
| 7 | 3/12/2014 Email from Garver to Deanna | ROTH 128-133 |
| 8 | 3/12/2014 Email from Deanna to Garver | ROTH 134-137 |
| 9 | 3/26/2014 Email from Deanna to Garver | ROTH 138-141 |
| 10 | 3/27/2014 Email from Garver to Deanna | ROTH 142-145 |
| 11 | 4/21/2014 Email from Garver to Deanna | ROTH 146 |
| 12 | 5/03/2014 Email from Garver to Deanna | ROTH 158-159 |
| 13 | 5/06/2014 Email from Deanna to Garver | ROTH 161-162 |
| 14 | 5/06/2014 Email from Garver to Deanna | ROTH 163-164 |
| 15 | 5/09/2014 Email from Deanna to Garver | ROTH 168 |
| 16 | 5/13/2014 Weekly Economic Update | ROTH 170-173 |
| 17 | 5/19/2014 Email from Deanna to Garver | ROTH 178-179 |
| 18 | 5/20/2014 Email from Deanna to Garver | ROTH 182-183 |
| 19 | 5/20/2014 Email from Garver to Deanna | ROTH 195-197 |
| 20 | 6/04/2014 Email from Garver to Deanna | ROTH 214 |
| 21 | 6/06/2014 Email from Deanna to Garver | ROTH 216 |
| 22 | 6/06/2014 Email from Deanna to Garver | ROTH 218-219 |
| 23 | 7/09/2014 Email from Garver to Deanna | ROTH 263 |
| 24 | 7/09/2014 Email from Deanna to Garver | ROTH 264 |
| 25 | 7/10/2014 Email from Deanna to Garver | ROTH 275-276 |
| 26 | 7/15/2014 Email from Garver to Deanna | ROTH 281 |
| 27 | 7/02/2014 Assurity Life Insurance Company Century+ Disability Income Insurance Proposal | ROTH 14-29 |
| 28 | 7/02/2014 Mutual of Omaha Accident Only Disability Premium Quote | ROTH 30-40 |
| 29 | 8/08/2014 Email from Garver to Deanna | ROTH 292 |
| 30 | 9/04/14 Email from Deanna to Garver | ROTH 324-327 |
| 31 | 4/02/2015 Email from Deanna to Garver | ROTH 523-525 |
| 32 | 4/06/2015 Email from Koby to Garver | ROTH 526 |
| 33 | 4/10/2015 Email from Garver to Koby | ROTH 542 |
| 34 | 4/21/15 Email from Koby to Garver | ROTH 552 |
| 35 | 5/08/2015 Email from Koby to Garver | ROTH 570-571 |
| 36 | 5/22/15 Email from Koby to Garver | ROTH 585-587 |
| 37 | 5/26/2015 Email from Garver to Koby | ROTH 592-594 |

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| 38 | 5/29/2015 Principal Life Ins. Disability Income Insurance Illustration | ROTH 4-13 |
| 39 | 6/03/2015 Email from Garver to Koby | ROTH 611-614 |
| 40 | 6/04/2015 Email from Julie to Garver | ROTH 615 |
| 41 | 6/04/2015 Email from Koby to Garver | ROTH 621-624 |
| 42 | 6/10/2015 Email from Garver to Koby | ROTH 658-662 |
| 43 | 8/07/2015 Email from Garver to Deanna | ROTH 788 |
| 44 | Principal Life Insurance Co. Disability Insurance Application | PLIC-UW-2594-2604 |
| 45 | 8/07/2015 Garver premium check | ROTH 1 |
| 46 | 8/27/2015 Email from Julie to Garver | ROTH 806 |
| 47 | 8/30/2015 Email from Garver to Julie | ROTH 810 |
| 48 | 8/31/2015 Email from Julie to Garver | ROTH 814-815 |
| 49 | 9/29/2015 Email from Julie to Garver | ROTH 869 |
| 50 | 10/12/2015 Principal Life Ins. Disability Income Insurance Illustration | ROTH 41-49 |
| 51 | 10/06/2015 Letter from Principal to Garver | ROTH 71 |
| 52 | Principal Life Ins. Disability Income Protection Coverage - Outline of Coverage | ROTH 89-96 |
| 53 | Disability Income Policy No. 7881467 | RPG 1-36 LTD |
| 54 | 11/12/2015 Principal Life Amendment and Acceptance Form | ROTH 77 |
| 55 | 10/15/2015 Email from Garver to Deanna | ROTH 915-917 |
| 56 | 11/10/2015 Email from Garver to Deanna | ROTH 940 |
| 57 | 1/27/2016 Email from Garver to Koby | ROTH 1044-1045 |
| 58 | 4/03/2016 Email from Deanna to Garver | ROTH 1125-1126 |
| 59 | 5/05/2016 Email from Garver to Deanna | ROTH 1179-1180 |
| 60 | 5/09/2016 Email from Garver to Deanna | ROTH 1193-1195 |
| 61 | 6/14/2016 Email from Roth to Garver | ROTH 1226-1229 |
| 62 | 7/08/2016 Email from Garver to Roth | ROTH 1358-1360 |
| 63 | 7/12/2016 Email from Garver to Sherri Aron | ROTH 1372-1373 |
| 64 | 9/18/2016 Email from Garver to Roth | ROTH 1416 |
| 65 | 10/19/2016 Email from Garver to Roth | ROTH 1461 |
| 66 | 7/18/2017 Email from Sherri to Garver | ROTH 1577 |
| 67 | 7/19/2017 Email from Sherri to Garver | ROTH 1579 |
| 68 | 8/04/2017 Email from Sherri to Garver | ROTH 1582 |
| 69 | 8/01/2017 Garver's Claim Form to Principal | ROTH 78-85 |
| 70 | 8/03/2017 Letter from Garcia to Garver | PLIC 2178-2179 |
| 71 | 8/14/17 Disability Claim Form | PLIC 2101-2108 |
| 72 | 8/17/17 Email from Molly to Sherri | ROTH 1598 |

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| 73 | 8/24/2017 Email from Principal Life to Garver | PLIC 1803 |
| 74 | 8/25/2017 Email from Garver to Garcia | PLIC 1782 |
| 75 | 8/28/2017 S. Garcia Notes and Action Plan | PLIC 2196-2197 |
| 76 | 8/29/2017 Email from Garver to Garcia | PLIC 1572-1781 |
| 77 | 8/29/2017 Email from Garcia to Garver | RPG 404C |
| 78 | 9/01/2017 Letter from Garcia to Garver | PLIC 1570-1571 |
| 79 | 9/11/2017 Email from Garver to Garcia | RPG 408C-409C |
| 80 | 9/12/2017 Email from Garcia to Garver | RPG 408C |
| 81 | 9/25/2017 Letter from Garcia to Garver | PLIC 1423 |
| 82 | 9/25/2017 Email from Roth to Garver | ROTH 1616-1617 |
| 83 | 9/27/2017 Email from Garcia to Garver | PLIC 1293-1294 |
| 84 | 10/09/2017 Letter from Garcia to Garver | RPG 1240, PLIC 1266 |
| 85 | 10/13/2017 Email from Garver to Garcia | ROTH 1618 |
| 86 | 10/16/2017 Email from Garcia to Garver | PLIC 1256-1257 |
| 87 | 11/13/2017 Letter from Garcia to Garver | PLIC 1109-1110 |
| 88 | 11/21/2017 Email from Garcia to Garver | PLIC 1066 |
| 89 | 11/21/2017 Email from Sherri to Garver | ROTH 1657-1659 |
| 90 | 11/21/2017 Email from Garver to Sherri | ROTH 1666-1668 |
| 91 | 11/21/2017 Email from Garver to Roth | ROTH 1681-1683 |
| 92 | 11/30/2017 Email from Garcia to Garver | ROTH 1034 |
| 93 | 12/04/2017 Email from Deanna to Molly | ROTH 1696 |
| 94 | Chart of benefit payments to Garver | PLIC 2318 |
| 95 | 12/15/2017 Email from Garver to Roth | ROTH 1699 |
| 96 | 12/21/2017 Email from Sherri to Garver | ROTH 1708-1710 |
| 97 | 1/05/2018 Email string between Garver and Roth | ROTH 1718 |
| 98 | 1/05/2018 Email from Deanna to Garver | ROTH 1719-1720 |
| 99 | 2/19/2018 Email from Garcia to Garver | PLIC 1052 |
| 100 | 3/06/2018 Email string between Garver and Roth | ROTH 1755 |
| 101 | 3/06/2018 Email from Roth to Garver | ROTH 1757-1759 |
| 102 | 3/07/2018 Garver Continuation Claim Form | PLIC 399, 1008 |
| 103 | 3/17/2018 Email from Molly to Garcia | ROTH 1775, PLIC 1007 |
| 104 | 3/19/2018 Email from Garcia to Garver | ROTH 1778-1779, PLIC 997 |
| 105 | 3/19/2018 Email from Molly to Garcia | PLIC 997 |
| 106 | 3/19/2018 Email string between Garver and Roth | ROTH 1787 |
| 107 | 3/20/2018 Email from Garcia to Molly | RPG 438C, PLIC 997 |
| 108 | 4/09/2018 Letter from Garcia to Garver | PLIC 420 |
| 109 | 4/24/2018 Email from Garver to Garcia | PLIC 410-411 |
| 110 | 4/28/2018 Email from Garver to Garcia | RPG 452C-453C, PLIC 408-409 |
| 111 | 4/30/2018 Email from Garcia to Garver | PLIC 408 |

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| 112 | 5/01/2018 Email from Garcia to Molly | PLIC 405 |
| 113 | 5/16/2018 Email from Garcia to Garvers | PLIC 389 |
| 114 | 5/24/2018 Email from Garver to Garcia | PLIC 384 |
| 115 | 7/11/2018 Email from Garver to Garcia | PLIC 368 |
| 116 | 7/17/2018 Letter from Principal Individual Disability Insurance Claims to Garver | PLIC 367 |
| 117 | 7/26/2018 Email from Garcia to Garver | PLIC 359 |
| 118 | 8/16/2018 Email from Garcia to Garver | PLIC 354-355 |
| 119 | 8/20/2018 Email from Garcia to Molly | PLIC 351 |
| 120 | 8/24/2018 Letter from McElderry to CoventBridge Group | RPG 227-228 CLAIM |
| 121 | 8/28/2018 Email from Molly to Garcia | PLIC 326-328 |
| 122 | 8/30/2018 Email from Garcia to Garver | PLIC 324 |
| 123 | 8/30/2018 Email from Garcia to Garver | PLIC 309-310 |
| 124 | 8/30/2018 Email from Garcia to Garver | RPG 189-192 CLAIM |
| 125 | 8/30/2018 Email from Garver to Roth | ROTH 1830-1831 |
| 126 | 8/30/2018 Email from Garver to Sherri | ROTH 1832-1835 |
| 127 | 8/30/2018 Text messages between Roth and Garver | RPG 728C-732C |
| 128 | 9/04/2018 Text messages between Roth and Garver | RPG 732C-735C |
| 129 | 9/10/2018 Email from Sherri to Garver | ROTH 1848-1851 |
| 130 | 9/13/2018 Letter from Garcia to Garver | PLIC 295-296 |
| 131 | 9/17/2018 Email from Garver to Roth | ROTH 1864 |
| 132 | 9/21/2018 Email from Garcia to Garver | PLIC 183 |
| 133 | 9/23/2018 Email from Garver to Garcia | PLIC 182 |
| 134 | 9/23/2018 Email from Garver to Garcia | ROTH 1865-1866 |
| 135 | 9/26/2018 Text messages between Roth and Garver | RPG 738C-739C |
| 136 | 9/28/2018 Letter from Garcia to Garver | PLIC 167-181 |
| 137 | 10/8/2018 Email from Garver to Roth | ROTH 1874 |
| 138 | 11/5/2018 Letter from Bourhis Law Firm to Garcia, Principal Life Insurance Co. | PLIC 159-163 |
| 139 | 11/13/2018 Letter from Garcia to Bourhis Law Firm | RPG 16-32 CLAIM |
| 140 | 11/19/2018 Email from Bourhis Law Firm to D. Roth | ROTH 1888 |
| 141 | 11/28/2018 Email from Bourhis Law Firm to D. Roth | ROTH 1894-1895 |
| 142 | 12/14/2018 Email from Bourhis Law Firm to D. Roth | ROTH 1904 |
| 143 | 1/14/2019 Email from Bourhis Law Firm to D. Roth | ROTH 1914-1915 |
| 144 | Principal Life Ins. Co. Disability Insurance Application | PLIC 41-49 |
| 145 | Disability Income Policy No. 7881467 | PLIC 1-64 |
| 146 | Principal Life Ins. Co. Disability Insurance Application Part D | PLIC-UW 2603 |

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| 147 | Principal Life Ins. Co. Disability Insurance Amendment and Acceptance Form | PLIC-UW 2604 |
| 148 | 8/14/17 Disability Claim Form | PLIC 2101-2108 |
| 149 | 9/07/18 Letter to Garver from Covent Bridge Group with interview statement | PLIC 308 |
| 150 | 9/23/18 Email from Garver to S. Garcia | PLIC 182-183 |
| 151 | 9/28/2018 Letter from Garcia to Garver | PLIC 167-181 |
| 152 | Robert Garver Builders, Inc. For Profit Articles of Incorporation | RPG2000RGB-RPG2001RGB |
| 153 | Certification of Trust for the Garver Family Trust, 5/7/14 | RPG2015RGB-RPG2016RGB |
| 154 | Affidavit of Equitable Interest - Garvers/Welborn Sales, Inc. | RPG100WB-RPG157WB |
| 155 | 2016 Garver Individual Income Tax Returns | RPG000743-RPG000807 |
| 156 | 2018 8879-S for Welborn Sales, Inc. | RPG001049-RPG001082 |
| 157 | 2014 8879-S for Robert Garver Builders Inc. | RPG001000TAX-RPG001026TAX |
| 158 | 9/10/2015 Email acknowledgement of submission of Individual Disability Insurance application to the Principal Financial Group and requirements for underwriting | PLIC-UW-2496 |
| 159 | Underwriting File | PLIC-UW-2329-PLIC-UW-2697 |
| 160 | 9/24/2015 Email from L. Landwehr to F. Body | PLIC-UW-2548- |
| 161 | 10/5/2015 Teleapp Application Interview | PLIC-UW-2555 |
| 162 | 9/23/2018 Email from Garver to Garcia | PLIC 182-189 |
| 163 | 11/12/2015 Principal Life Amendment and Acceptance Form | PLIC-UW-2604 |
| 164 | 2/06/2016 Individual Disability Insurance Policy Annual Statement | PLIC-UW-2620-2621 |
| 165 | 5/23/2016 Letter from Principal Life Disability Insurance Administration to Garver | PLIC-UW-2631-2632 |
| 166 | 8/06/2016 Letter from Principal Life Disability Ins. Administration to Garver | PLIC-UW-2636-2639 |
| 167 | 2/06/2017 Individual Disability Insurance Policy Annual Statement | PLIC-UW-2640-2641 |
| 168 | 5/23/2017 Letter from Principal Life Disability Ins. Administration to Garver | PLIC-UW-2642-2643 |
| 169 | 8/06/2017 Letter from Principal Life Disability Ins. Administration to Garver | PLIC-UW-2656-2659 |
| 170 | 9/13/2018 Letter from Garcia to Garver | PLIC 295-300 |
| 171 | 8/28/2018 Continuation Claim Form | PLIC 328 |
| 172 | 7/26/2018 Email from Garcia to Garver | PLIC 359-364 |

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| 173 | 3/07/2018 Continuation Claim Form with attending physician statement | RPG00276CLAIM- RPG00278CLAIM |
| 174 | 11/21/2017 Email from Garcia to Garver | PLIC 1066-1068 |
| 175 | 11/13/2017 Letter from Garcia to Garver | PLIC 1109-1110 |
| 176 | 5/26/2020 Letter from Garcia to Bourhis Law Group | PLIC 2732-2735 |
| 177 | Email string Garver-Garcia, 4/28/18-5/1/18 | PLIC 405-407 |
| 178 | 2/23/2016 Letter from CBIZ to Garver | CBIZGarverBuilder0000722- CBIZGarverBuilder0000734 |
| 179 | GoFileRoom - Workflow Control Sheet - Robert Garver Builders Inc. | CBIZGarverBuilder0000735- CBIZGarverBuilder0000736 |
| 180 | 2015 Tax Return for Robert Garver Builders, Inc. | CBIZGarverBuilder0000737- CBIZGarverBuilder0000771 |
| 181 | 2015 K-1 for Robert Garver Builders, Inc. | CBIZGarverBuilder0000772- CBIZGarverBuilder0000773 |
| 182 | 2015 Tax Return for Robert Garver Builders, Inc. Filing Instructions | CBIZGarverBuilder0000774 |
| 183 | 2015 K-120S for Robert Garver Builders, Inc. | CBIZGarverBuilder0000777- CBIZGarverBuilder0000780 |
| 184 | 12/31/2015 Robert Garver Builders General Ledger | CBIZGarverBuilder0000790- CBIZGarverBuilder0000829 |
| 185 | 11/7/2016 Letter from CBIZ to Garver | CBIZGarverBuilder0000001- CBIZGarverBuilder0000015 |
| 186 | 2016 Tax Return for Robert Garver Builders, Inc. | CBIZGarverBuilder0000291- CBIZGarverBuilder0000323 |
| 187 | 2016 K-1 for Robert Garver Builders, Inc. | CBIZGarverBuilder0000324- CBIZGarverBuilder0000325 |
| 188 | 2016 K-120S for Robert Garver Builders, Inc. | CBIZGarverBuilder0000329- CBIZGarverBuilder0000335 |
| 189 | 2016 M-1120S for Robert Garver Builders, Inc. | CBIZGarverBuilder0000337- CBIZGarverBuilder0000345 |
| 190 | 8/14/2017 Electronic Filing information for Robert Garver Builders, Inc. | CBIZGarverBuilder0000352 |
| 191 | 2016 8879-S Form for Robert Garver Builders, Inc. | CBIZGarverBuilder0000353 |
| 192 | 12/31/2016 Robert Garver Builders General Ledger | CBIZGarverBuilder0000378- CBIZGarverBuilder0000469 |
| 193 | 6/14/2017 Email from Garver to E. Johnson | CBIZGarverBuilder0000485- CBIZGarverBuilder0000486 |
| 194 | 2017 Tax Return for Robert Garver Builders, Inc. | CBIZGarverBuilder0000016- CBIZGarverBuilder0000045 |
| 195 | 2017 K-1 for Robert Garver Builders, Inc. | CBIZGarverBuilder0000046- CBIZGarverBuilder0000047 |
| 196 | 2017 K-120S for Robert Garver Builders, Inc. | CBIZGarverBuilder0000050- CBIZGarverBuilder0000056 |
| 197 | 2017 M-1120S for Robert Garver Builders, Inc. | CBIZGarverBuilder0000058- CBIZGarverBuilder0000066 |

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| 198 | 12/31/2017 Robert Garver Builders General Ledger | CBIZGarverBuilder0000104- CBIZGarverBuilder0000223 |
| 199 | 6/12/2018 Email string between Johnson and Garver | CBIZGarverBuilder0000267- CBIZGarverBuilder0000269 |
| 200 | 10/16/2017 Letter from CBIZ to Garver | CBIZGarverBuilder0000490- CBIZGarverBuilder0000504 |
| 201 | 2018 Tax Return for Robert Garver Builders, Inc. | CBIZGarverBuilder0000506- CBIZGarverBuilder0000531 |
| 202 | 2018 K-1 for Robert Garver Builders, Inc. | CBIZGarverBuilder0000532- CBIZGarverBuilder0000534 |
| 203 | 2018 K-120S for Robert Garver Builders, Inc. | CBIZGarverBuilder0000537- CBIZGarverBuilder0000543 |
| 204 | 2017 M-1120S for Robert Garver Builders, Inc. | CBIZGarverBuilder0000545- CBIZGarverBuilder0000553 |
| 205 | 12/31/2018 Robert Garver Builders General Ledger | CBIZGarverBuilder0000582- CBIZGarverBuilder0000634 |
| 206 | 7/01/2019 Email from K. Bonner to E. Jonson | CBIZGarverBuilder0000958- CBIZGarverBuilder0000959 |
| 207 | 4/08/2016 Email from Kjergaard to Garver | CBIZGarverBuilder0000967 |
| 208 | 7/26/2016 Email from K. Williams to Garver | CBIZGarverBuilder0000992 |
| 209 | 12/29/2015 Email from Garver to D. Kjergaard | CBIZGarverBuilder0000993- CBIZGarverBuilder0000994 |
| 210 | 4/08/2016 Email from Kjergaard to Garver | CBIZGarverBuilder0001010 |
| 211 | 4/13/2016 Email from D. Kjergaard to Garver | CBIZGarverBuilder0001117 |
| 212 | 12/29/2015 Email from Garver to D. Kjergaard | CBIZGarverBuilder0001231- CBIZGarverBuilder0001232 |
| 213 | 4/10/2019 Email from Johnson to Garver | CBIZGarverBuilder0001335- CBIZGarverBuilder0001337 |
| 214 | 8/09/2017 Email from Johnson to Garver | CBIZGarverBuilder0001338 |
| 215 | 5/01/2017 Email from Johnson to E. Smith | CBIZGarverBuilder0001446- CBIZGarverBuilder0001448 |
| 216 | 8/29/2017 Email from Johnson to Garver | CBIZGarverBuilder0001468 |
| 217 | 3/31/2017 Email from Johnson to E. Smith | CBIZGarverBuilder0001549- CBIZGarverBuilder0001551 |
| 218 | 8/27/2018 Email from Johnson to Garver | CBIZGarverBuilder0001736 |
| 219 | 9/13/2019 Email from S. Thompson to Johnson | CBIZGarverBuilder0001744- CBIZGarverBuilder0001745 |
| 220 | 9/03/2019 Email from Johnson to Garver | CBIZGarverBuilder0001748- CBIZGarverBuilder0001749 |
| 221 | 2018 8879-S Form for Robert Garver Builders, Inc. | CBIZGarverBuilder0001751- CBIZGarverBuilder0001752 |
| 222 | 6/21/2019 Email from Johnson to Garver | CBIZGarverBuilder0001781 |
| 223 | 6/10/2019 Email from Johnson TO L. Theiss | CBIZGarverBuilder0001843- CBIZGarverBuilder0001844 |
| 224 | 5/13/2019 Email from Johnson to Bonner | CBIZGarverBuilder0001863 |

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| 225 | 5/01/2019 Email from Thompson to Johnson | CBIZGarverBuilder0001873- CBIZGarverBuilder0001875 |
| 226 | 4/07/2019 Email from Johnson to Garver | CBIZGarverBuilder0001897- CBIZGarverBuilder0001898 |
| 227 | 4/07/2019 Email from Garver to Johnson | CBIZGarverBuilder0001899- CBIZGarverBuilder0001900 |
| 228 | 3/13/2019 Email from Johnson to Garver | CBIZGarverBuilder0001913- CBIZGarverBuilder0001915 |
| 229 | 1/03/2019 Email from Johnson to Garver | CBIZGarverBuilder0001921- CBIZGarverBuilder0001923 |
| 230 | 11/12/2018 Email from Johnson to Bonner | CBIZGarverBuilder0001936- CBIZGarverBuilder0001937 |
| 231 | 10/09/15 Letter to Garver from Principal | ROTH 64 |
| 232 | 4/28/14 Email from Deanna to Garver | ROTH 150 |
| 233 | 5/20/14 Email from Deanna to Garver | ROTH 186-197 |
| 234 | 6/25/14 Email from Deanna to Garver | ROTH 237 |
| 235 | 7/10/14 Email from Garver to Deanna | ROTH 273-274 |
| 236 | 8/28/14 Email from Deanna to Garver | ROTH 295 |
| 237 | 6/02/15 Email from Koby to Garver | ROTH 602-604 |
| 238 | 6/03/15 Email from Koby to Garver | ROTH 611-614 |
| 239 | 11/10/15 Email from Deanna to Garver | ROTH 939 |
| 240 | 12/24/15 Email from Garver to Deanna | ROTH 994 |
| 241 | 1/19/16 Email from Garver to Deanna | ROTH 1034-1035 |
| 242 | 4/11/16 Email from Deanna to Garver | ROTH 1152-1153 |
| 243 | 5/09/16 Email from Deanna to Garver | ROTH 1196-1198 |
| 244 | 6/14/16 Email from Garver to Roth | ROTH 1246-1249 |
| 245 | 6/21/16 Email from Garver to Deanna | ROTH 1254-1258 |
| 246 | 6/22/16 Email from Roth to Garver | ROTH 1264-1265 |
| 247 | 7/8/16 Email from Roth to Garver | ROTH 1342-1343 |
| 248 | 10/20/16 Email from Roth to Garver | ROTH 1462-1463 |
| 249 | 10/22/16 Email from Garver to Roth | ROTH 1466-1467 |
| 250 | 11/23/16 Email from Garver to Roth | ROTH 1476-479 |
| 251 | 3/27/17 Email from Sherri to Garver | ROTH 1508 |
| 252 | 7/14/17 Email from Deanna to Molly | ROTH 1573 |
| 253 | 7/18/17 Email from Sherri to Garver | ROTH 1576 |
| 254 | 8/15/17 Email from Molly to Sherri | ROTH 1586 |
| 255 | 8/15/17 Email from Sherri to Molly | ROTH 1589-1590 |
| 256 | 8/17/17 Email from Sherri to Garver | ROTH 1595 |
| 257 | 8/18/17 Email from Sherri to Garver | ROTH 1601 |
| 258 | 10/18/17 Email from Garver to Sherri | ROTH 1619-1620 |
| 259 | 11/08/17 Email from Garver to Roth | ROTH 1621 |
| 260 | 11/08/17 Email from Sherri to Garver | ROTH 1623 |
| 261 | 11/08/17 Email from Garver to Sherri | ROTH 1625-1626 |
| 262 | 11/16/17 Email from Garver to Sherri | ROTH 1629 |
| 263 | 11/20/17 Email from Garver to Sherri | ROTH 1630-1631 |

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| 264 | 11/20/17 Email from Garver to Sherri | ROTH 1647-1648 |
| 265 | 11/21/17 Email from Garcia to Garver | ROTH 1669-1671 |
| 266 | 12/01/17 Email from Roth to Garver | ROTH 1693-1694 |
| 267 | 2/18/18 Email from Garver to Roth | ROTH 1727 |
| 268 | 2/18/18 Email from Roth to Garver | ROTH 1729-1730 |
| 269 | 2/26/18 Email from Garver to Roth | ROTH 1739-1740 |
| 270 | 2/26/18 Email from Sherri to Garver | ROTH 1745-1746 |
| 271 | 3/29/18 Email from Garver to Roth | ROTH 1790-1791 |
| 272 | 4/19/18 Email from Garver to Roth | ROTH 1807 |
| 273 | 4/24/18 Email from Roth to Garver | ROTH 1809 |
| 274 | 10/11/18 Email from Garver to Sherri | ROTH 1881-1882 |
| 275 | Text messages | RPG 773C-784C |
| 276 | 11/20/17 emails from Molly Garver to Garver, and from Garver to Garcia | PLIC 1069-1070 |
| 277 | 3/21/18 letter from Garcia to Garver | PLIC 992 |
| 278 | 7/9/18 email from Garcia to Garver and 7/11/18 response | PLIC 368 |
| 279 | 8/30/18 email from Garcia to Garver | PLIC 324 |
| 280 | 8/30/18 email exchange Garcia/Garver | PLIC 309-310 |
| 281 | 6/19/20 letter from Garcia to Garver | |
| 282 | CoventBridge Report | PLIC 302-305 |
| 283 | 9/27/17 email from Garver to Garcia | PLIC 1262 |

]

3. FACTUAL CONTENTIONS.

a. Contentions of Plaintiff Robert Garver.

This case is about a man who relied on the wrong people for disability insurance. Bob Garver's first mistake was to trust a financial advisor named Duane Roth. In 2015, Roth persuaded Garver to buy disability insurance. Roth filled out all the paperwork and applied for a policy with Principal Life. The policy Principal delivered, however, was much different than the policy Roth pitched to Garver.

Without telling Garver, Roth delivered a policy with smaller benefits and narrower coverage, instructing Garver to just sign on the dotted line. Roth, a Principal representative, received compensation from Principal for the sale. Like most people, Garver did not think about this again until he became disabled.

On July 12, 2017, Garver was on the roof of a home he was building when he

tripped and fell twenty feet. He was admitted to the emergency room with multiple injuries and underwent surgery with Leslie M. Landau, DO. Eight days later, Garver was released from the hospital. He had experienced a ruptured spleen, a collapsed lung, torn ligaments and tendons, numerous fractures, including every rib on the left side of his body, and a severed finger. His finger was reattached.

Garver's wife, Molly, informed Roth and they mobilized to file Total and Catastrophic Disability claims with Principal immediately. Garver's physician declared him permanently disabled and Garver has continued with surgery on an ongoing basis.

Principal seemed to perform a normal claim investigation at first. It asked Garver and Dr. Landau to fill out claim forms, obtained medical and financial records. Meanwhile Garver was in bed, being cared for by his wife, Molly, a former nurse. Molly would turn his body every twenty minutes to prevent clotting and assist him with everything, from eating and bathing to using the toilet. To this day, she continues to assist Garver with activities of daily living. About 90 days later after his accident, Principal approved Garver's Total Disability claim and paid him \$4,680 in benefits. It made glancing note of Garver's Catastrophic Disability claim, stating simply it does not apply.

Uneasy about his benefits being so small, Garver turned to Roth for answers. Roth never admitted the amount he applied for was higher than what they received. All he did was tell Garver he was looking into it.

Garver ultimately did not make a full recovery. His doctor concluded Garver could not return to his occupation as a general contractor. All of Garver's training, experience, and specialized skills suddenly became useless. He needed to find another way to make ends meet. Thankfully, he had an Own Occupation policy, which Roth said

provides monthly benefits in the event Garver cannot work in his Own Occupation. “It’s not like you need to go work at McDonalds,” Roth often said.

While Garver mulled over what to do next, he sought advice from Principal about his future benefits. Principal beguiled Garver into a course of action it knew would result in the termination of his benefits. Garver had no idea how insurance works, but he asked the right questions. Principal not only misrepresented his policy, but also, admitted it tried to facilitate a return to work. Likewise, Roth instructed Garver to take a new job. Garver had purchased a new company, Welborn Sales, but not worked until he was instructed to do so by Roth and Principal. Had he been informed of the consequences; he would not have returned to work and have kept Welborn as an investment.

Principal and Roth’s misconduct pushed Garver into starting a new occupation in order to terminate his Total Disability benefits. In doing so, Principal and Roth irreparably violated Garver’s trust. His benefits were terminated on September 28, 2018. But it was not until much later that Garver uncovered how sinister their actions really were.

The obvious betrayal to Garver occurred when Principal terminated his Total Disability claim. But the most astounding aspect of this case is Garver’s discovery that Principal owed him benefits for the Catastrophic Disability all along. The Catastrophic Disability claim is distinct from the Total/Residual Disability claim. It involves a different coverage inquiry and provides \$8,000 per month in benefits. This is in addition to any other sums owed under the Policy for Total/Residual Disability.

Garver’s Catastrophic Disability claim was summarily denied by Principal with no explanation, other than to say, “it does not apply.” Principal’s claim representative,

Stephanie Garcia, admitted in her deposition that Principal never investigated the Catastrophic Disability claim, despite its obligation to investigate all claims thoroughly and fairly.

Principal still has not paid Garver's Catastrophic Disability Claim, nor has it paid his Residual Disability claim, dating back to January of 2019, despite its clear obligation to do so. One of the saddest ironies of this case is how Principal has maligned Garver as dishonest and uncooperative, when nothing could be further from the truth.

Principal has staked its Residual Disability denial on the basis that it does not have contemporaneous profit and loss statements, which do not exist, and that it does not have year-end tax returns, which also do not exist. It is unfair and illusory for Principal to have issued a policy that purportedly pays monthly benefits for Residual Disability, but then adjust Garver's claim in a way that makes monthly payments impossible. It has forced Garver to wait over a year and a half for his Residual Disability benefits. All the while, Principal has withheld all benefits owed to Garver for Catastrophic Disability and has been withdrawing premiums from Garver's bank every month.

b. Contentions of Defendant Principal Life Insurance Company.

Principal Life Insurance Company is an insurance company with its principal place of business in Des Moines, Iowa, which, among other products, also underwrites and issues individual and group disability and life insurance policies to individuals and companies nationwide.

Plaintiff Robert Garver ("Plaintiff" or "Garver") (born 1974) completed Part A of a disability insurance application on August 7, 2015, requesting disability income insurance

coverage from Principal Life with a monthly benefit amount of \$7,000.00. On the application, he selected additional optional benefit riders, including the residual disability and recovery benefit rider. He identified his “Occupation/Duties” in Part A of the application as “owner/contractor.” Based on his occupational rating of 3A, a regular occupation rider was not available for Plaintiff.

Plaintiff signed the application, representing, “that all statements in this application(s) are true and complete and were correctly recorded before I signed my name below.” He further certified understanding that the “statements in this application(s), including all of its parts, and statements by the Proposed Insured in any medical questionnaire(s) that becomes a part of this application(s), will be the basis of any insurance issued” and that “misrepresentations could mean denial of an otherwise valid claim and rescission of the policy during the contestable period.” On October 5, 2015, Plaintiff completed Part B of the insurance application via teleapp. During the telephone call, he identified his “primary occupation” as “General Contractor” and the type of business or industry as “New Home Construction.” He described his Job Title as “Managing Member, Managing Partner” and his job activities and percentage of time spent in each as “Coordinate job schedules 50% oversee office management 50%.” Subsequent testimony has shown that this information is incorrect and, indeed, made clear that Plaintiff since the formation of his company, Robert Garver Builder, Inc., in 1999, has spent his time in framing carpentry, working on the roof of a building every single day. Plaintiff has attempted to blame Defendant Duane Roth for the incorrect occupational information on the claim form, however, Mr. Roth had nothing to do with this information which Plaintiff

himself provided directly over the telephone to an individual who thereafter recorded the information.

Relying on the accuracy of the information provided by Plaintiff, Principal Life issued Disability Income Policy No. 7881467 (“Policy”) with a Policy Date of August 6, 2015. Principal Life approved Plaintiff for a monthly disability benefit of \$4,500.00 rather than the \$7,000.00 he had applied for due to Plaintiff’s income not supporting a monthly benefit of \$7,000.00. On November 12, 2015, Plaintiff signed the corresponding Amendment and Acceptance Form certifying that the amendment to the application is part of the application and that the Policy is issued on the basis of the statements in the application and in the amendment and acceptance form. Despite his misrepresentation of the nature of his occupation, Plaintiff again certified that all statements in the application as amended are true and complete as of the date of signing of the amendment and acceptance form. Plaintiff further signed Part D of the application, acknowledging delivery of the Policy to him.

Upon submission of Proof of Loss as requested by Principal Life, the Policy allows a monthly benefit for Total Disability, defined as follows:

TOTAL DISABILITY – means solely due to Injury or Sickness:

1. During the Your Occupation Period
 - a) You are unable to perform the substantial and material duties of Your Occupation; and
 - b) You are not Working.
2. After the Your Occupation Period You are unable to Work in any occupation You are reasonably suited to by Your education, training and experience.
3. Both during and after the Your Occupation Period, You satisfy the requirements of the Claim Information section.

[. . .]

On July 12, 2017, Plaintiff fell off the roof of a house in the immediate neighborhood of his then-residence in Spring Hill, Kansas. Plaintiff sustained injuries which kept him in the ICU for 3 days and in rehabilitation for 5 days. He thereafter was released to return to his home, which was not modified in any way to accommodate his injuries. Shortly thereafter, on August 4, 2017, Plaintiff submitted a claim for disability income benefits as of July 13, 2017 under the Policy. On his claim form, Plaintiff claimed that his business consisted to 50% of framing and 50% of business management and that he was unable to perform framing, trim carpentry, deck building, operating machinery and operating tools. The attending physician's statement accompanying Plaintiff's form and completed by his trauma surgeon Dr. Les Landau indicated that Plaintiff would be able to return to work within 4-6 months. Dr. Landau restricted Plaintiff for at least 6 weeks to occasionally sitting, standing and walking and no lifting, carrying or traveling. Dr. Landau left the section of the claim form, allowing for a narrative regarding additional restrictions or limitations, blank.

Because Plaintiff claimed disability during the first 2 years of his insurance coverage, Principal Life conducted a review of the application to ensure a lack of misrepresentations in accordance with the contestability clause in the Policy. Principal Life made Plaintiff aware of this in its initial claim acknowledgement letter dated August 3, 2017 as well as in subsequent correspondence. On September 27, 2017, Ms. Stephanie Garcia, the claim analyst assigned to Plaintiff's claim, identified the discrepancy between the description of Plaintiff's work duties on his application for insurance and the description on his claim form as well as in his medical records and asked for further information. Plaintiff responded the same day, stating:

My job consists of the 50/50 statement of coordinating schedules and overseeing office management but in construction sometimes as a contractor we are required to where tools and do work to meet deadlines if subcontractors do not follow through with their obligations or with quality workmanship or general labor shortages.

This is the case in this scenario where there was a lack of labor to perform carpentry to meet deadlines and schedules which then requires me to perform those tasks as needed from time to time. The entire country is in a labor shortage for construction workers and as a result the costs of labor have spiked in the last couple of years.

Plaintiff and his wife both provided deposition testimony in this case that directly contradicts Plaintiff's statements in his September 27, 2017 email to Ms. Garcia.

Relying on Plaintiff's then explanation that his work duties had changed from 2015 to 2017, however, Principal Life decided to not pursue rescission or reformation of the Policy despite the fact that its underwriting department confirmed that had Principal Life known that Plaintiff's work duties included manual labor as described on his claim form (and verified by his deposition testimony), the Policy would have issued at an occupational rating of 2A. The features of Plaintiff's Policy would not have been available to him at an occupational rating of 2A, specifically, the "Your occupation period" would not have been allowed to exceed 5 years, rather than spanning to age 65 as in Plaintiff's Policy.

On November 13, 2017, Principal Life approved Plaintiff's claim, informing him that it would send a payment for October 10, 2017 – the in-benefit date after the 90 day elimination period set out in the Policy – through November 12, 2017. Principal Life let Plaintiff know that in accordance with the Policy's proof of loss provisions it needed "updated medical restrictions and limitations from [his] treating physician" to review his claim eligibility beyond November 12, 2017. Additionally, Principal Life stated:

If you are able to return to work with restrictions from your doctor, we'll calculate your monthly earnings and pay your benefits based upon your Loss of Earnings. Please notify me as soon as possible if you return to work. To complete this calculation, we will need your monthly earnings and/or Profit and Loss Statements on an ongoing basis.

Subsequent to receipt of the first benefit payment, Plaintiff complained on November 20, 2017 that the benefit amount paid should have been higher. In response, Ms. Garcia explained on November 21, 2018 that the Policy had a base benefit of \$4,680.00 and enumerated the riders attached to the Policy, explaining when they applied, and informing Plaintiff that none of them were applicable to him at this time based upon the information provided.

On November 28, 2017, Dr. Landau confirmed that Plaintiff would recover sufficiently to return to work within 4-6 months from the date of his statement. He placed temporary restrictions of occasionally walking and traveling and no lifting or carrying beyond 20 pounds on Plaintiff. Principal Life continued benefit payments and checked in with Plaintiff three months later, on February 19, 2018, seeking updated medical information. Unbeknownst to Principal Life, Plaintiff had purchased his step-father's business, Welborn Sales, Inc., located in Salina, Kansas, on December 22, 2017, and assumed its role as President. In January 2018, Plaintiff further purchased 80 acres of land in Assaria, Kansas, where soon thereafter construction of his new family home commenced. Additionally, as of January 2018, if not sooner, Plaintiff began to commute to Salina, Kansas, on a weekly basis to work at Welborn Sales, Inc. Nonetheless, Plaintiff's response email to Ms. Garcia from February 19, 2018 did not include any of this information and only reported that Plaintiff was waiting to see a "foot specialist" after an MRI of his ankle and foot revealed that a "fracture still existed." On a Continuation Claim

form signed by Plaintiff on March 7, 2018, Plaintiff reported only that he was “considering a career change to office job due to injuries.”

On March 21, 2018, Principal Life referred Plaintiff’s file for a review by an independent physician. Physiatrist Dr. Arlen David Green reviewed Plaintiff’s medical records and on March 29, 2018, confirmed that Plaintiff was a candidate for a left foot accessory navicular excision and that his prognosis to return to work without restriction was poor while surgery was pending. Dr. Green further noted that based on the clinical evidence, Plaintiff would be restricted to “[l]ifting, carrying, pushing and pulling 30 pounds occasionally and 20 pounds frequently,” “[w]alking and standing 15 minutes continually each and up to 3 hours total (1.5 hours each) per day,” and “[n]o climbing ladders, working at heights, or operating heavy machinery.” Plaintiff’s ability to sit was unrestricted. Dr. Green noted that Plaintiff’s restrictions should be reassessed within the next months given the pending surgical intervention to Plaintiff’s foot, which Plaintiff by his own admission has still not undergone.

On April 9, 2018, Principal Life let Plaintiff know that it would like to schedule a home visit.

On April 28, 2018, Plaintiff contacted Ms. Garcia by email, again concealing the actual facts of the purchase of his step-father’s company and assumption of the role of its president in December 2017, and instead claiming that he “will have to take a new office job in sales, and will require [him] to move [his] family to Salina, KS.” He further asserted that his wife, Mrs. Garver, “had to go back to work after his injuries,” which she denied as incorrect in her deposition. He finished his email by asking whether he could “rely on the

benefit we are receiving for our disability policy.” Ms. Garcia responded the following Monday, on April 30, 2018, explaining:

Yes, your policy could continue to pay you through almost actually age 66 for you – the policy pays through your Age 65 Policy Anniversary, so it’s the policy anniversary following your 65th birthday, so for you this would be August 6, 2040. In order to continue to qualify for benefits, essentially we need 2 things – medical records and restrictions and limitations to support an ongoing disability, as well as a Loss of Earnings of at least 20%. If at any point you would no longer have restrictions, or if your income would return to at least 80% of your prior earnings, at that point your claim would likely close, however, if you continue to be medically disabled and you have having that loss of earnings due to your disability, yes, you can rely on those benefits continuing.

The policy we are paying under is your Disability Income policy, which is income replacement in the amount of \$4680.00 per month. You will see a Cost of Living Adjustment on your July benefit.

Plaintiff did not respond to Ms. Garcia’s email.

On May 16, 2018, Ms. Garcia followed up relative to any upcoming doctor’s appointments for Plaintiff and asked for an update on Plaintiff’s relocation plans. Over a week later, on May 24, 2018, Plaintiff responded, again failing to disclose the purchase of Welborn Sales, Inc., from his step-father in December 2017, the assumption of the role of its president and his commuting to Salina every week to work at the business since at least January 2018. Instead, he informed Ms. Garcia that he “will be moving to Salina a couple weeks after our kids get out of school,” had no plans for a doctor change and was planning to schedule his foot surgery once he was settled in Salina.

Ms. Garcia checked in almost two months later, on July 9, 2018, to see if Plaintiff was settled in. She requested the completion of an updated Continuation Claim form to understand Plaintiff’s medical needs. Plaintiff responded on July 11, 2018, letting her know that his family was living with his in-laws in Salina, Kansas, and that he would be sending the completed Continuation Claim form. Ms. Garcia followed up on the completed form on July 26, 2018 and scheduled the in-home visit with Plaintiff in Salina. Given the treating

physician portion of the Continuation claim form, Mrs. Garver asked on July 26, 2018 whether an appointment would need to be made with Dr. Landau to provide the requested information. Ms. Garcia explained the need for updated medical information since the last update had been dated in March and checked in with Plaintiff on August 16, 2018 when she received no response to her July 26, 2018 explanation. On August 17, 2018, Mrs. Garver informed Ms. Garcia that the completed forms would be coming.

Principal Life prepared questions for the in-home visit with Plaintiff, which was scheduled to go forward on August 28, 2018. The questions included questions pertaining to Plaintiff's ability to complete his activities of daily living, what changes, if any, he made to successfully complete them and what activities were difficult because of his condition.

On August 28, 2018, Plaintiff finally provided the claimant portion of the Continuation Claim form, asserting that he had returned to work full time on June 1, 2018 to a new job in sales and office work, for which he relocated to "new city." Plaintiff again did not disclose the purchase of Welborn Sales, Inc., in December 2017, his weekly commute to Salina, Kansas, by car starting in at least January 2018, and his purchase of 80 acres in Assaria, Kansas, in January 2018 for purposes of relocation to work at Welborn Sales, Inc.

Based on the information on the form, and as mandated by the Policy, Ms. Garcia informed Plaintiff on August 30, 2018 that given Plaintiff's return to work, his claim was now being viewed under the terms of the Policy's Residual Disability rider. Residual Disability as defined in the Rider means:

RESIDUAL DISABILITY – means:

1. You are not Totally Disabled; and
2. Solely due to Injury or Sickness You have a Loss of Earnings equal to or greater than 20% of Your Prior Earnings and:
 - a) You are able to perform some, but not all, of the substantial and material duties of Your Occupation or You are unable to work Full Time in Your Occupation; or
 - b) You are working in another occupation; and
3. You satisfy the requirements of the Claim Information section of the policy.

If You are Retired, Residual Disability means, solely due to Injury or Sickness, Your ability to perform the normal activities of a retired person in good health and of like age is restricted. If You are Unemployed, Residual Disability means, solely due to Injury or Sickness, Your ability to obtain a job that You are reasonably suited for by education, training and experience is restricted.

While You are Working during a period of Residual Disability, You must Work to the full capacity allowed medically and vocationally in that occupation by Your Injury or Sickness including any reasonable job or work site modification. If You choose not to Work to full capacity, benefits will be paid as if You are Working at full capacity in that occupation.

If You are not Totally Disabled and You choose not to Work, even though You are able to Work at any occupation for which You are reasonably suited by education, training and experience, benefits will be paid as if You are Working at full capacity in that occupation.

In her email, Ms. Garcia requested monthly paystubs “from June to current and then monthly going forward in order to calculate his Loss of Earnings.”

Plaintiff responded shortly thereafter, claiming again that Principal Life was not paying the full benefit under the Policy and contesting that the Residual Rider was applicable despite the fact that he had returned to work in January 2018.

Plaintiff’s assertions belied the clear language of the Policy and thus, still on August 30, 2018, Ms. Garcia sent a lengthy response, providing Plaintiff with copies of the data pages of his Policy identifying the benefit amount payable under the Policy as well as with the definition section of the Policy, setting out the definition of Total Disability, and the entire Residual Disability Benefit rider. She further explained that:

I’m also including the definitions of your policy, as well as the Residual Disability Benefit rider. You are correct that your policy does include Own Occupation for the duration of the claim, and as we evaluate your claim, we are always going to compare your current restrictions and limitations to the duties and requirements of the occupation you had prior to your disability. Unfortunately this does not mean that earnings for any other occupations are not considered when you return to work in a new or different occupation.

On September 7, 2018, Mr. Garver received a copy of the interview statement from the home visit with him that took place on August 28, 2018. He was specifically asked to review the statement and make any additions or deletions directly to the statement and return it in the envelope provided to Principal Life. Principal Life never received a revised and/or signed statement.

The section of the report addressing Plaintiff's answers to the activities and abilities questions set out above states as follows:

Activities

Mr. Garver cannot do many activities he was able to do prior to the accident. He cannot walk or run for any length of time. His stamina is much lower due to his injuries. There are certain things that Mr. Garver has to do differently during the day, for instance when he puts on a shirt, he needs to move a certain way to not cause pain in his shoulder or rib cage.

Mr. Garver can still drive a car normally but cannot stay seated for an extended period of time. He did not cook and has not done any house duties since the accident. Mr. Garver used to take care of all the landscaping and yard work but has not done any of that since the accident. He can still shop or go out for activities but cannot walk for an extended period of time due to pain in his foot. Mr. Garver does not have any issues reading or watching television. He has not attended any large sporting events or any major outings since the injury. He is not participating in any volunteer work or clubs outside the home. Mr. Garver can still fish and maintains this as a hobby.

Sleeping is an issue based on his shoulder and rib cage pain. He gets up several times a night due to comfort level. This usually causes him to be drowsy the next day. Mr. Garver sometimes uses exercise bands but does not do any routine exercise. He does not have any issues attending medical appointments or running errands as long as it does not include standing or walking for an extended period of time.

Bending, lifting, carrying, or reaching causes pain in his shoulder in the rib cage area. This does not have an effect on him concentrating but has a huge effect on the time it would take to complete a simple task. Any physical activity is now more difficult because of his condition.

Mr. Garver now works in an office environment. He sometimes has to go to the field into the field to speak with clients, but the job is predominately done in an office.

Plaintiff further explained his job duties as follows:

Job duties

With his old business, Mr. Garver would be actively involved in the construction of his homes. He was comfortable with every aspect of home construction. He would put in 10-hour days on average when constructing homes. Mr. Garver did not do much traveling while constructing homes as the development was located near where they were living.

Prior to the accident, Mr. Garver would be lifting, standing, bending, and dealing with construction equipment or tools all day. The last time Mr. Garver was involved in any construction was the day of the accident. He did not work in any capacity until becoming President of Wellborn Sales in January 2018.

It would be impossible to do any of his prior job duties based on his condition. Mr. Garver would have trouble lifting, balancing, or manipulating any tools on a construction site due to the multiple injuries he sustained. He wouldn't even be able to work with regular hand tools due to the loss of feeling in his hand. He also cannot stand or walk for any extended period of time due to his ankle injury and cannot twist or lift due to his shoulder and ribcage injuries.

After the accident, the remaining homes under construction were completed by subcontractors. The first few months after the accident are kind of a blur because of the medication and rehab he was dealing with.

Mr. Garver enjoyed the freedom of his job and loved building homes. He was proud of the homes he built and took pride in constructing well built homes. The one thing Mr. Garver disliked about the job was service callbacks, dealing with resident complaints. Mr. Garver believes that some of the construction knowledge will help in his new role, especially the business management and sales aspects.

Mrs. Garver, when specifically asked to go over the statement in her deposition, did not identify any mistakes or information left out in those sections.

Given the information provided by Plaintiff in the interview, Ms. Garcia sent a letter dated September 13, 2018, stating:

In a recent email from you, you indicated that you had returned to work in June 2018, however during the in-person interview you participated in on August 28, 2018, you stated that you have moved to Salina in January 2018, purchased Wellborn Sales from your father-in-law, and assumed the roll of President of Wellborn Sales at that time. You indicated your current salary is \$4000 a month, with Wellborn Sales typically has between \$100,000 and \$300,000 worth of sales per month.

Since you've returned to work, we'll calculate your monthly earnings and pay your benefits based upon your Loss of Earnings. To complete this calculation, please send your monthly pay statements and profit and loss statements on an ongoing basis. To ensure prompt payments, please provide your monthly earnings information timely. At this time, we will need statements from January 2018 to current.

Also, at the end of each year of disability, we'll ask you to submit your individual income tax return and business tax return, if applicable. Once this information is received, we'll compare the benefit amounts we've paid to the earnings reported on the tax return(s) and determine if benefits were paid appropriately.

Ms. Garcia provided copies of applicable policy provisions and explained that if the information requested was not received, Principal Life would have to make a decision based on the information in its possession.

When there was no response from Plaintiff, Ms. Garcia followed up on September 21, 2018, stating:

I just wanted to follow up and see if you had any additional questions, or if you had a chance to speak with your agent yet. I had sent a letter out to you on September 13th as well, outlining the additional information we need for your claim. Please let me know if you have any questions on that or if I can help with anything at all.

I know that Dr. Landau also had his portion of your Continuation Claim form to complete, but we haven't received it yet from him. If you could follow up with him on that, I would really appreciate it.

On September 23, 2018, Plaintiff responded, maintaining his position that Principal Life was “treating this case improperly as a Residual Disability situation” and stating:

I am not agreeable to providing pay stubs or any other financial information at this time. We have been advised that Principal is not treating this policy correctly.

Our advisor will be reaching out to you to try to get our benefit back on track. Hopefully, without any type of litigation.

Given Plaintiff's refusal to cooperate with Principal Life's claim review and to provide the requested information to calculate the residual disability benefit, Principal Life terminated his benefits in correspondence dated September 28, 2018, as the Policy requires:

We must be provided with satisfactory written proof of loss. This is information that We deem necessary to determine whether benefits are payable and the amount of benefits payable. If the, proof of loss requirements We request are not received, the claim will be denied. Proof of loss requirements include, but are not limited to:

1. Any requested claim form including claim forms from You and Your Doctor(s) or the letter described above;
2. Documentation demonstrating You are under Regular Care By A Doctor;
3. Documentation of objective medical evidence of Your Injury or Sickness;
4. Copies of medical records, test results and/or Doctor's progress notes;
5. Financial documents, which may include copies of Federal Income Tax Returns, Certified Public Accountant's statements, billing/expense information, bank statements, cancelled checks, IRS authorization, or other documents We deem necessary;
6. Examination(s) of financial records performed by Us or an independent financial examiner hired by Us;
7. Employer/employment information;
8. Independent Medical Examination(s). (See Independent Medical Examination provision below);
9. A personal interview with a company representative, which may include a statement under oath;
10. Evidence that reasonable job or work site modifications are not feasible; and
11. Other proof of loss requirements We deem necessary.

Ms. Garcia's September 28, 2018 letter specifically set out Plaintiff's right to request reconsideration, including submission of the documents previously requested to calculate his benefit payment. Instead of doing so, however, Plaintiff retained counsel, sent a letter on November 5, 2018, making a demand for payment within 72 hours. Principal Life responded on November 13, 2018, explaining its claim decision and its need for the previously requested information to determine continued eligibility for benefits under the Residual Disability and Recovery Benefit Rider of the Policy. Principal Life informed Plaintiff's counsel:

Since Mr. Garver has reported that he has returned to work we need the requested information to determine if he qualifies for benefits under the Residual Disability and Recovery Benefit Rider of his policy. Once we receive the additional information listed above, we will re-open Mr. Garver's claim and continue our review.

Without the information requested we are unable to determine Mr. Garver's entitlement to benefits under his policy and therefor respectfully reject your settlement demand.

Despite having been provided with the applicable policy language and with the knowledge that Principal Life "will reopen Mr. Garver's claim and continue [its] review" once the information requested has been received, Plaintiff continued to refuse to provide the requested information and instead filed suit on June 5, 2019, claiming that Principal Life breached its contract with Plaintiff by terminating his claim when he refused to provide information needed to calculate his residual disability benefit as well as that Ms. Garcia had misrepresented the terms of the coverage to him, which led him to move to Salina and start working at Welborn Sales, Inc.

Plaintiff's claims have no merits in light of the fact that even Plaintiff's own standard of care expert has testified that Plaintiff had a duty to provide proof of loss as requested by Principal Life, that he had a duty to cooperate with Principal Life during the claim review, and that in case of a failure to provide requested proof of loss and cooperate, Principal Life has the right to terminate benefit payments. Plaintiff's claim for misrepresentation also fails in light of the detailed and fully accurate descriptions of the coverage by Ms. Garcia in numerous emails and Plaintiff's purchase of Welborn Sales, Inc., and his work start in January, 2018, preceding any questions to Ms. Garcia pertaining to the coverage. Instead, it is Plaintiff who misrepresented his occupational duties on his application for insurance, securing terms of coverage well exceeding what he would have been able to purchase had he disclosed the true nature of his occupational duties,

misrepresented his occupational duties during Principal Life's subsequent contestability review to avoid losing his coverage, failed to provide timely notice of his purchase of Welborn Sales, Inc., and assumption of role of president, failed to provide timely notice of his starting work in Salina, and ultimately failed to cooperate by refusing to provide requested information needed for the calculation of benefits due.

c. Contentions of Defendants The Roth Companies and Duane Roth.

Duane Roth is a financial advisor who, among other things, sells securities and insurance. The Roth Companies, Inc., is his firm.

In 2014, Roth was introduced to Robert Garver by Garver's mother, who already was a client. Garver was looking for a financial advisor, and transferred his securities account from Edward Jones. Garver also was looking to buy more life insurance and a disability policy. This case revolves around the disability policy.

At the time, Garver was about 40 years old and was in the construction business. He had previously been a carpenter/craftsman, but by this point had his own company, Robert Garver Builders, Inc., as well as other companies. Garver told Roth he was a general contractor who had others doing the labor, and did not disclose that he personally was performing framing, carpentry, manual labor, and other construction work.

Garver took his time and reviewed all proposals suggested by Roth, and even had a lawyer review the materials. It actually took a year for Garver to buy a disability policy. Roth made several presentations to Garver, including one for an Assurity policy and one for a Mutual of Omaha policy, neither of which Garver chose to buy.

Roth ultimately showed Garver a policy offered by Principal Life, which is what Garver eventually purchased. There were actually two presentations and an application and

an amended application because (1) Garver chewed tobacco, which increased his premium, and (2) Principal Life's due diligence demonstrated that his income was not high enough to support the amount of disability payment Garver originally wanted.

Roth presented to Garver an initial Disability Income Insurance Illustration on behalf of Principal Life, dated May 29, 2015. That initial Illustration assumed a monthly disability benefit of \$7,000, which Roth and Garver had discussed. The Illustration made clear, however, that it was only an illustration, not an actual policy, and did not modify any actual policy or rider that may be forthcoming. The Illustration also included this summary of Total Disability:

You must be unable to perform the substantial and material duties of your occupation and you are not working.

(Bold in original; underscoring added) It thus was made clear to Garver from the outset that a total disability benefit would only be paid if he was not working at all.

The Illustration also proposed a Residual Disability and Recovery Benefit Rider that would be invoked if Garver went back to work in another occupation:

If you are residually disabled under the terms of his rider and lose at least 20% of your prior earnings due solely to an injury or sickness and you are unable to perform some, but not all, of the substantial and material duties or you are unable to work full time in your occupation **or you are working in another occupation, you'll receive a benefit proportionate to your loss.**

(Emphasis added) Thus, contrary to Garver's allegations, it was clear at the very outset that his disability benefit would be affected if he returned to work in another occupation.

Garver wanted, and Roth's first presentation assumed, a monthly disability payment of \$7,000. In the underwriting process, however, Principal Life received Garver's income records, which showed his income was too low to support that high of a disability

payment. Thus, Principal Life reduced the benefit to \$4,500 per month, with a COLA escalator. This is important because one aspect of Garver's claim is that he believes he is entitled to \$7,000 per month, instead of \$4,500 per month, up until age 65. That belief is belied by all of the relevant documents, including the Policy itself.

Garver alleges that he has an Own Occupation policy, or "OwnOcc." He claims that he is entitled to full disability benefits if he can no longer work in his "own occupation," and therefore can go back to work in any other job and still receive full benefits. But that is not what the Policy says, as Garver was advised many times.

A critical document is the Disability Insurance Application executed and submitted by Garver, as amended. On the very first page the box is checked that Garver was seeking Disability Income insurance; importantly, the box also is checked for the Residual Disability and Recovery Benefit Rider, which would come into play if Garver went back to work. The definitions underlying this insurance had already been well described to Garver in the Illustration materials.

Also in the Application, Garver made material misrepresentations that void the Policy. First, Garver described his job activities as:

COORDINATE JOB SCHEDULES 50%

OVERSEE OFFICE MANAGEMENT 50%

By admission, this was not true; to the contrary, Garver instead was engaged in extensive manual labor and construction work, including framing, carpentry, and climbing on roofs virtually every day. Had Garver told the truth about his job activities when applying for the insurance, the policy likely never would have been issued, and certainly not at the premium offered.

The Application also represents that Garver had only a 50% ownership interest in his company. His tax returns, however, show that he owned 100% of that company. That misrepresentation affected the underwriting process as well.

The Amended Application, completed after Principal's underwriting process, reduced the monthly benefit to \$4,500, then stated at the bottom:

All statements in the Application, as amended, are true and complete as of the date I am signing this Amendment and Acceptance Form.

Garver signed this document, which is dated November 12, 2015. Garver thus represented that all his statements in the Application were true, even though they were not.

Garver now alleges that Roth misrepresented the policy to him, and that the policy should somehow be amended to reflect what Roth supposedly told him: that he could go back to work and still receive full total disability benefits. Yet that claim is belied by another provision of the Application:

I understand and agree that no agent, broker, licensed representative, telephone interviewer, or medical examination has the authority to determine insurability, or to make, change, or discharge any contract, or to waive any of the Company's rights.

Garver acknowledged that no matter what Roth did or did not say, the policy is the policy, and Roth had no ability to change it or characterize it.

To that end, in the Application Garver also acknowledged receipt of the Policy. Indeed, the Application states:

I acknowledge that policy numbered 7881467 was delivered to me today and is based on the life of Robert P. Garver.

Again, Garver signed that document.

Roth had previously given Garver a document titled "Disability Income Protection Coverage – Outline of Coverage." That document noted at the outset that Garver should

“READ YOUR POLICY CAREFULLY!” The Outline specified that the Total Disability Coverage would end and the Residual Disability and Recovery Benefit Rider would apply if Garver went back to work. The definition of Total Disability remained the same as on the Illustration, including that the Total Disability Benefit would apply *only if Garver was not working*. It then stated that the Residual Disability Benefit would apply if Garver went back to work, and then his benefits would be adjusted. Roth added a signature line for Garver at the end of the Outline and had Garver sign it, acknowledging his understanding of those key terms.

The controlling document is of course the Disability Income Policy itself. It is the contract between Principal Life and Garver and contains all of the terms and conditions of Garver’s disability insurance. The Policy defines Total Disability as stated previously, including that Garver could not go back to work and still receive a full total disability benefit. The Policy also includes the Residual Disability Rider, which provides that Garver’s benefits would be adjusted if he did return to work.

The Policy also contains another critical term, one that is dispositive of Garver’s claims. In the section titled “Claim Information,” the Policy provides that Garver must provide proof of loss requirements at a reasonable frequency required by Principal Life, and must fully cooperate with Principal Life concerning all matters related to the Policy and any claims filed under it. As will be seen, it was Garver’s refusal to cooperate with Principal Life that led to the termination of his benefits.

The Policy is clear on all of these points. Garver claims the Policy is all a bunch of boilerplate that nobody reads and that he did not read any of it. To the extent that Garver claims negligence by defendants, his negligence in failing to read the Policy completely

undercuts his claims, and at a minimum his negligence must be compared to the alleged negligence of other parties.

In July, 2017, Garver was performing manual labor on a new house and fell off the roof, and suffered serious injuries. Within days, his wife, Molly, filled out a disability benefit application, now stating—contrary to what was stated in the Application for the Policy—that Garver spent 50% of his time in carpentry work and framing. Molly has admitted that the original Application for the Policy was untrue in that material respect.

There was a 90-day elimination period before benefits began, so Principal Life started paying benefits in October. Because Garver was not working, Principal Life started paying him \$4,500 per month, the full benefit. Garver incorrectly claimed he was supposed to receive \$7,000 per month, as reflected in an extensive email exchange between the Garvers and a Principal Life claims analyst, Stephanie Garcia. During this time, Garcia also requested Garver's medical records and had some difficulty getting them.

Garver lived in the Kansas City metro area, but his wife was from Salina, Kansas. After his fall, Garver got the idea to buy his father-in-law's company in Salina, called Welborn Sales, Inc., and move to Salina. Again, the Policy, and the correspondence and email exchanges between Principal Life and Garver, made clear that if Garver returned to work, his benefits would be affected. Roth also told Garver his benefits would be reduced, but stated that he would still be dollars ahead because, even though his disability benefit would be less he would be back to earning more income from work.

Garver made the move to Salina in January, 2018, but did not tell Roth or Principal Life of that move at that time. In a later series of emails with Garcia, he disclosed that he had gone back to work; in response, Garcia told him that he is now not totally disabled but

the Residual Disability Rider will apply. Garcia also asked Garver for his pay stubs or other records showing his new income so that the benefit could be adjusted.

On September 13, 2018, Garcia sent Garver a letter reiterating that, because Garver had returned to work, Principal Life would now calculate his earnings and pay his benefits under the Residual Disability Rider. Garcia requested his monthly earnings going back to January, 2018, and warned:

If we do not receive the requested information by the above date, we will have to make a decision based on the information we already have.

In response, Garver emailed Garcia on September 23, 2018, stating:

I am not agreeable to providing pay stubs or any other financial information at this time.

Left with no other choice, on September 28, 2018, Garcia wrote Garver a letter stating:

As of the date of this letter, we have not received the Proof of Loss that is needed for us to evaluate your claim to determine your eligibility to benefits per the terms of your policy. Consequently, we are denying your claim.

Garver alleges that Roth negligently represented the Policy to him at the time of purchase, and that later on Garver relied on Roth's alleged representation that he could go back to work in another occupation and still receive total disability benefits. Those allegations are untrue. But even if they were true, they are irrelevant. As admitted by Garver's own designated expert witness, Garver received total disability benefits from Principal Life during the entire time that he received benefits, and that Principal Life properly terminated benefits when Garver refused to supply requested information to Principal Life. And, as Garver's expert testified, Roth had nothing to do with that.

4. LEGAL CLAIMS AND DEFENSES.

a. Legal Claims of Plaintiff(s).

Count I of the Amended Complaint alleges breach of contract against Principal. Count II alleges misrepresentation against Principal, The Roth Companies, and Roth. Count III alleges negligence against The Roth Companies and Roth.

b. Defenses of Defendant(s).

Principal Life denies Garver's allegations and claims and asserts that the termination of Plaintiff's claim was the Policy-mandated consequence of Garver's failure to provide requested and required documentation. Moreover, Principal Life asserts that Garver misrepresented his occupational duties on his application for coverage, inducing Principal Life to issue a policy it would not have issued had it known the true facts of Garver's occupation. Garver perpetuated his misrepresentation during the claim review by claiming that his occupational duties had changed from 2015 to 2017, directly contrary to his deposition testimony in this case. Garver further failed to cooperate with Principal Life's claim review by refusing to provide requested and required documents.

The Roth Companies and Roth deny Garver's allegations and his claims. The Roth Companies and Roth also assert that Garver has suffered no damages not of his own making and that any damages he may have suffered are a proximate result of his own negligence or other causes. Garver also has failed to mitigate his alleged damages.

5. DAMAGES AND NON-MONETARY RELIEF REQUESTED.

The total present value of Garver's disability claims with Principal is \$3,818,072. Plaintiff has suffered catastrophic injuries inhibiting him from performing at least two activities of daily living without assistance, he is entitled to a disability insurance benefit of \$8,000 per month starting 90 days after his date of disability, through the end date of benefits under his

policy, including a COLA. Plaintiff has provided Defense Counsel with a present value report from Susan Thompson with calculations of Garver's catastrophic disability benefits. The present value of Plaintiff's catastrophic disability claim is \$2,469,123.

The present value of Plaintiff's Residual Disability claim is \$1,348,949, which has been updated in light of the fact that Defendant Principal has paid Plaintiff the previously unpaid amount of his 2018 disability benefits.

Roth breached his duty to provide Plaintiff a disability insurance policy with \$7,000 per month in Total Disability benefits. Due to Roth's negligence, Plaintiff was delivered a policy with \$4,500 per month in Total Disability benefits. Plaintiff seeks damages from Roth in the amount of the difference between such benefit amounts in a sum according to proof at trial.

Plaintiff alleges pain, suffering, mental anguish, further non-economic loss, unknown at this time, but will be established according to proof at trial.

Plaintiff's attorney fee is 40% of the total recovery. Furthermore, Plaintiff claims attorney's fees as provided for by law as provided by, but not limited to, K.S.A. 40-256.

Punitive damages assessed with a multiplier of up to nine times all other damages or as otherwise provided for by law according to proof at trial to be assessed by the trier of fact.

Costs to date: this amount is increasing due to the cost of depositions, record retrieval and expert witness fees. The exact amount is currently unknown but will be established according to proof at trial.

Statutory interest as provided for by law according to K.S.A. 40-2,126 and 28 U.S.C. 1961,

Plaintiff reserves the right to pursue additional damages in amounts that are not known at this time.

[It is Principal Life's position that the damage items not timely disclosed are in dispute and will be subject to a motion to strike if not voluntarily withdrawn by Plaintiff.

6. AMENDMENTS TO PLEADINGS.

None.

7. DISCOVERY.

Under the scheduling order and any amendments, all discovery was to have been completed by August 7, 2020. Discovery is complete.

Unopposed discovery may continue after the deadline for completion of discovery so long as it does not delay the briefing of or ruling on dispositive motions or other pretrial preparations. Although discovery may be conducted beyond the deadline for completion of discovery if all parties are in agreement to do so, under these circumstances the court will not be available to resolve any disputes that arise during the course of such extended discovery.

8. MOTIONS.

a. Pending Motions.

[List any pending motions, including the date of filing and the ECF document number.]

b. Additional Pretrial Motions.

After the pretrial conference, the parties intend to file the following motions:

Defendants all intend to file motions for summary judgment, as well as *Daubert* motions.

Plaintiff intends to file applicable pre-trial motions in limine and / or trial briefs, including potentially a trial brief concerning the agency status of Roth / the Roth Companies.

The dispositive-motion deadline, as established in the scheduling order and any amendments, is September 11, 2020. The parties should follow the summary-judgment guidelines available on the court's website:

<http://ksd.uscourts.gov/wp-content/uploads/2015/10/Summary-Judgment-Guidelines.pdf>

Consistent with the scheduling order filed earlier in this case, the arguments and authorities section of briefs or memoranda must not exceed 30 pages, absent an order of the court.

c. Motions Regarding Expert Testimony. All motions to exclude testimony of expert witnesses pursuant to Fed. R. Evid. 702-705, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), or similar case law, must be filed no later than September 11, 2020.

9. TRIAL.

The trial docket setting, as established in the scheduling order and any amendments, is _____, 20__, at _____.m., in _____, Kansas. This case will be tried by jury. Trial is expected to take approximately 7 days. The court will attempt to decide any timely filed dispositive motions approximately 60 days before trial. If the case remains at issue after timely dispositive motions have been decided, then the trial judge may enter an order or convene another pretrial conference to set deadlines for filing final witness and exhibit disclosures, exchanging and marking trial exhibits, designating deposition testimony for presentation at trial, motions in limine, and proposed jury instructions.

IT IS SO ORDERED.

Dated _____ 2020, at _____, Kansas.

Kenneth G. Gale
U. S. Magistrate Judge

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